UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN BRANTLEY,	:	
Plaintiff	:	
	:	
v.	:	Civil Action No.
	:	3:03 CV 1904 (CFD)
NEW HAVEN FIREFIGHTERS	:	
LOCAL 825, et al.,	:	
Defendants	:	

RULING ON MOTION TO DISMISS

Plaintiff John Brantley ("Brantley") brings this action against the International Association of Firefighters, New Haven Firefighters Local 825 ("Local 825" or "Union"), and against Union President Patrick Egan, former Union Secretary-Treasurer Timothy Scanlon, and current Union Secretary-Treasurer James Kottage. Brantley alleges five counts in his complaint: that the defendants discriminated against him because of his race, in violation of 42 U.S.C. § 1981; that the defendant Union and individual co-defendants breached contractual and fiduciary obligations to Union member Brantley; that the defendant Union breached an implied covenant of good faith and fair dealing to represent Brantley in grievance proceedings; and that the defendants committed the Connecticut common law torts of both intentional and negligent infliction of emotional distress.[1]

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[1] Brantley's complaint also refers to 42 U.S.C. § 12101 et seq., more commonly known as the Americans with Disabilities Act ("ADA"). See Complaint [Doc. #1] at ¶ 2. Brantley, however, does not allege either that he is a disabled individual entitled to the ADA's protection or that any conduct by the defendants violated the terms of that statute. All pleadings containing claims for relief must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Since Brantley validly has invoked the jurisdiction of the Court under 42 U.S.C. § 1981 and 28 U.S.C. §§ 1331, 1343(3), the subject matter jurisdiction for his complaint rests on those grounds. The Court will not address the ADA.

The defendants have moved to dismiss Brantley's claims for failure to state a claim upon which relief can be granted [Doc. #9], arguing that Brantley's claims are barred by the doctrine of res judicata. For the reasons that follow, the motion to dismiss is granted.

I. Background[2]

Brantley, an African-American firefighter, joined the New Haven Department of Fire Services ("Department") in 1983. He received several promotions during his tenure with the Department, ultimately reaching the position of Director of Community Relations and Public Fire Education in 1996. In January 2002, the Department informed Brantley that he was the subject of an internal investigation regarding his alleged misuse of confidential personnel information, and that he would be placed on administrative leave until the investigation was concluded.[3] Brantley then received a letter from Local 825 on January 29, 2002, stating that the Union had chosen not to represent him during the pendency of the investigation or any subsequent grievance proceedings. That letter was signed by Patrick Egan in his capacity as Union president.

In February 2002, Brantley appeared before the New Haven Board of Fire Commissioners to contest the legitimacy of the investigation and his being placed on leave. Nonetheless, the Department terminated Brantley's employment shortly thereafter. Brantley sought review of his termination before the Connecticut Board of Mediation and Arbitration, which review was also unsuccessful. During these proceedings, Brantley retained private counsel at his own expense.

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[2] These facts are taken from the plaintiff's complaint.

[3] Brantley's complaint dates some of these incidents as occurring in 2003. His subsequent filings, as well as those of defendants, agree that the conduct of which he complains took place in 2002.

Brantley alleges that since the Union served as collective bargaining representative for all employees of the Department, and since Brantley was a dues-paying Union member in good standing, he was owed a duty of full and fair representation by the Union during his dispute with the Department. Brantley further alleges that white firefighters routinely receive such representation from Local 825, and that he was treated differently by the Union because of his race. Brantley claims that the Union's failure to meet its contractual duties to him directly and proximately caused his wrongful termination by the Department, as well as causing him extreme emotional distress. Brantley seeks compensatory damages, punitive damages, costs, and attorney fees.

II. Motion to Dismiss Standard

When considering a Rule 12(b)(6) motion to dismiss, the Court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984); Easton v. Sundram, 947 F.2d 1011, 1014-15 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Frasier v. General Elec. Co., 930 F.2d 1004, 1007 (2d Cir. 1991). "The issue on a motion to dismiss is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims." United States v. Yale-New Haven Hosp., 727 F. Supp. 784, 786 (D. Conn. 1990) (citing Scheuer, 416 U.S. at 232). Thus, a motion to dismiss under 12(b)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Sheppard v. Beerman, 18 F.3d 147,

150 (2d Cir. 1994) (citations and internal quotations omitted), cert. denied, 513 U.S. 816 (1994). In its review of a 12(b)(6) motion to dismiss, the Court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transp. Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

III. Discussion

The defendants claim that dismissal under Federal Rule of Civil Procedure 12(b)(6) is warranted because plaintiff Brantley's claims are barred under the doctrine of res judicata. They argue that Brantley previously filed suit against them in the District of Connecticut, that his previous suit was dismissed in the defendants' favor, and that this Court is precluded from relitigating the same issues. See Brantley v. New Haven et. al., Case No. 3:02cv1329 (AVC) (D. Conn. Apr. 1, 2003) ("Brantley I").

Res judicata is a judicial doctrine encompassing two different principles, commonly referred to as claim preclusion and issue preclusion. Claim preclusion is the theory that a prior judgment on a given claim should have the effect of foreclosing all subsequent litigation on that claim, "whether or not relitigation of the claim raises the same issues as the earlier suit." New Hampshire v. Maine, 532 U.S. 742, 748 (2001). Issue preclusion, in contrast, stands for the notion that a prior judgment should foreclose those parties' "successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment," regardless of whether the issue subsequently arises in the same claim or a different one. Id; see also Burgos v. Hopkins, 14 F.3d 787, 789 (2d Cir. 1994); United States v. Envicon Dev. Corp., 153 F. Supp. 2d 114, 123 (D. Conn.

2001).

Defendants argue that both claim preclusion and issue preclusion apply to bar Brantley's current suit. Because res judicata is an affirmative defense under Federal Rule of Civil Procedure 8(c), the defendant generally is required to plead it in his answer. When, however, "all relevant facts are shown by the court's own records . . . the defense may be upheld on a Rule 12(b)(6) motion without requiring an answer." Day v. Moscow, 955 F.2d 807, 811 (2d Cir. 1992). The Court therefore will look to the record in Brantley I to guide its res judicata analysis.[4]

Brantley filed Brantley I on July 31, 2002, naming both the City of New Haven ("City") and Local 825 as defendants. He brought suit under 42 U.S.C. § 1983, the federal Labor Management Relations Act ("LMRA"), and various state law provisions. His complaint alleged that both the City and the Union deprived him of due process and equal protection when he was unfairly terminated in February 2002; that the City violated its collective bargaining agreement with Local 825 for so terminating him; and that Local 825 breached its obligation under both LMRA and Conn. Gen. Stat. § 5-271 (requiring unions to fairly represent covered employees under Connecticut law) to represent Brantley in his dispute with the City.

In a ruling filed April 1, 2003, United States District Judge Alfred V. Covello granted defendants' motion to dismiss Brantley I. Judge Covello held that Brantley failed to allege legally cognizable due process and equal protection violations by the City, and that neither the City nor the

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[4] The Court may consider matters of which judicial notice may be taken in evaluating a motion to dismiss under Fed. R. Civ. P. 12(b)(6), which include "prior pleadings, orders, judgments, and other items appearing in the Court's records of prior litigation that is closely related to the case sub judice." Hackett v. Storey, 2003 U.S. Dist. LEXIS 23366, *7 (D. Conn. Dec. 30, 2003).

Union qualified as covered entities under the Labor Management Relations Act. Judge Covello proceeded to dismiss Brantley's due process and equal protection claims under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief could be granted, and dismissed Brantley's LMRA claims under Rule 12(b)(1) for lack of subject matter jurisdiction. Having thus dismissed all of Brantley's federal claims, Judge Covello declined to exercise supplemental jurisdiction over Brantley's remaining state law fair representation claim. See generally Brantley I, slip. op. at 2-13. Brantley appealed the judgment of dismissal to the Court of Appeals for the Second Circuit. His appeal was dismissed in a mandate issued on May 7, 2003. Brantley then filed his complaint in this case on November 5, 2003.

The Second Circuit has laid out four factors that courts should consider in determining whether res judicata bars a subsequent action: "whether 1) the prior decision was a final judgment on the merits, 2) the litigants were the same parties, 3) the prior court was of competent jurisdiction, and 4) the causes of action were the same." Corbett v. MacDonald Moving Servs., 124 F.3d 82, 88 (2d Cir. 1997).

As to the first factor, "judgments under 12(b)(6) are on the merits, with res judicata effects, whereas judgments under Rule 12(b)(1) are not." Exchange Nat'l Bank v. Touche Ross & Co., 544 F.2d 1126, 1130-31 (2d Cir. 1976). Therefore, the dismissal of Brantley's LMRA claims in Brantley I has no res judicata ramifications, as those claims were dismissed merely for lack of subject matter jurisdiction. Brantley's due process and equal protection claims, however, were dismissed for failure to state a claim upon which relief could be granted. Under Exchange Nat'l Bank, those latter dismissals qualify as on the merits, and res judicata operates as to those portions of the Brantley I judgment.

As to the second factor, clearly the litigants here are the same parties as in Brantley I.[5] As to the third factor, Judge Covello possessed valid jurisdiction over the case under 42 U.S.C. § 1983 (notwithstanding his dismissal of the LMRA claims under Rule 12(b)(1)), and none of the parties has suggested otherwise. Whether Brantley I precludes the instant case thus turns on the fourth factor, whether both suits involved the "same cause of action."

The "same cause of action" requirement does not mean that both suits must involve precisely the same claims; rather, this aspect of res judicata prevents litigants from pursuing "all grounds of recovery previously available" to them, regardless of whether such claims were actually asserted in the first proceeding. Archer v. Warner, 538 U.S. 314, 319-320 (2003) (citing Brown v. Felsen, 442 U.S. 127, 131 (1979)); see also Storey v. Cello Holdings, L.L.C., 347 F.3d 370, 380 (2d Cir. 2003) ("a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action") (emphasis added); L-Tec Electronics Corp. v. Cougar Electronic Org., 198 F.3d 85, 88 (2d Cir. 1999) (holding that "same cause of action" requirement applies to preclude "claims based upon different legal theories . . . provided they arise from the same transaction or occurrence").

The decisive test for determining whether causes of action are the same for res judicata purposes is whether both actions arise "out of the same nucleus of operative fact," and whether those

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[5] The "same parties" requirement applies to parties and their privies. See, e.g., Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n.5 (1979). Therefore, although defendants Egan, Scanlon, and Kottage were not named in Brantley I, as privies of original defendant Local 825, they may rely upon any preclusive effect of that initial judgment. Moreover, the true question here is whether the previous judgment binds Brantley and precludes him from bringing additional claims. The fact that Brantley is the named plaintiff in both suits clearly satisfies the "same parties" test.

underlying facts are "'related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations.'" Interoceanica Corp. v. Sound Pilots, Inc., 107 F.3d 86, 90 (2d Cir. 1997) (quoting Restatement (Second) of Judgments § 24(2) (1982)). Therefore, to the extent that a second cause of action is based upon the same nucleus of operative fact as a prior suit which has received a judgment on the merits, "a plaintiff cannot avoid the effects of res judicata by 'splitting' his claim into various suits. . . ." Waldman v. Village of Kiryas Joel, 207 F.3d 105, 110 (2d Cir. 2000).

The Second Circuit decision in Woods v. Dunlop Tire Corp., 972 F.2d 36 (2d Cir. 1992), discusses the "same cause of action" requirement at length. In Woods, plaintiff Lucille Woods had worked for defendant Dunlop Tire Corporation for nine years. She was fired eight months before her pension was due to vest. Dunlop claimed that it terminated Woods because she was physically unable to carry out her job functions. Woods alleged that she was fired because she was an African-American woman. She filed a grievance with her union, which was denied. Woods then brought suit against Dunlop and the union in the Western District of New York, alleging that the corporation was liable under the Labor Management Relations Act for firing her in violation of the collective bargaining agreement, and that her union had breached its duty of fair representation. The district court granted summary judgment for the defendants, holding that Woods' termination did not violate LMRA, and dismissed Woods' complaint. See Woods, 972 F.2d at 37-38.

Two years after that dismissal, Woods received a right-to-sue letter from the Equal Employment Opportunity Commission. Woods again filed suit against Dunlop in the Western District of New York, this time alleging violations of Title VII of the Civil Rights Act of 1964 for Woods' wrongful

discharge on the basis of her race and sex. The district court also granted summary judgment for Dunlop in the second suit, holding that Woods' Title VII claim could have been raised in the first action and thus was barred by res judicata. Woods appealed to the Second Circuit, arguing that res judicata should not apply to such separate and distinct causes of action. See id. at 38.

The Second Circuit denied Woods' appeal, holding that both actions were based upon the same "transaction" and therefore constituted the same cause of action for res judicata purposes:

> Essentially the same underlying occurrence was relevant to both the LMRA and Title VII claims. Both actions centered around Dunlop's firing of Woods, the reasons for termination, and her employment history, physical limitations, and qualifications. . . . It is this identity of facts surrounding the occurrence which constitutes the cause of action, not the legal theory upon which Woods chose to frame her complaint.

Id. at 38-39.

Applying the Second Circuit's reasoning in Woods to the instant case, the Court concludes that Brantley's current complaint arises from the same cause of action as his first complaint and is barred by the doctrine of res judicata. Both of Brantley's lawsuits concern the same nucleus of operative facts, namely the events surrounding the New Haven Department of Fire Service's investigation and termination of Brantley's employment in early 2002. Indeed, the facts alleged in Brantley's two complaints mirror each other, with minor exceptions. See also Waldman, 207 F.3d at 110-11 ("[T]he facts essential to the barred second suit need not be the same as the facts that were necessary to the first suit. It is instead enough that 'the facts essential to the second were [already] present in the first.'") (quoting Interoceanica, 107 F.3d at 91).

Moreover, Brantley's complaint today alleges a civil rights violation under 42 U.S.C. § 1981; as such, it would have formed a convenient trial unit with the federal civil rights violation brought under

42 U.S.C. § 1983 that Brantley alleged in his first complaint. There would have been no jurisdictional bar to Brantley's including or joining a § 1981 claim to that first complaint, and the Court finds that treating all those claims as a single trial unit would have conformed to the parties' expectations for the litigation. Therefore, the Court deems that Brantley's § 1981 claim involves the same cause of action as his earlier § 1983 claim. Since that prior § 1983 claim received a final adjudication on the merits when it was dismissed under Rule 12(b)(6) in Brantley I, res judicata applies to bar the federal claim alleged in the instant case.[6]

IV. State Law Claims

Having dismissed Brantley's § 1981 claim under Rule 12(b)(6) for failure to state a claim upon which relief can be granted, on the grounds of res judicata, the Court declines to exercise supplemental jurisdiction over Brantley's remaining state law claims. See 28 U.S.C. § 1367(c)(3). The Court does not reach the issue of whether res judicata, based upon the judgment in Brantley I, operates to preclude the remaining state law counts.

IV. Conclusion

The Motion to Dismiss [Doc. #9] is GRANTED. The Clerk is directed to order judgment in favor of the defendants and close this case.

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[6] The Court notes that the pertinent sections of Judge Covello's ruling on the motions to dismiss under Fed R. Civ. P. 12(b)(6) in Brantley I addressed Brantley's due process and equal protection claims against the City only. Brantley, however, alleged due process and equal protection violations by both the City and the Union in Counts Two and Three of his complaint in Brantley I, and Judge Covello ultimately dismissed the entire action as to both defendants. Although the Union only raised lack of subject matter jurisdiction under LMRA and did not address the due process and equal protection claims in its motion to dismiss in Brantley I, Judge Covello's treatment of those issues under Rule 12(b)(6) in his opinion operates to bar the claims against the Union in the instant case under the doctrine of res judicata.

SO ORDERED this 15th day of October 2004, at Hartford, Connecticut.

/s/ CFD

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE